

Unit 10 Realignment Side Letter Agreement
CAPS Counter Proposal
October 25, 2011 (1:00 pm)

TA
10/25/2011
1:36 p.m.

This agreement is a Side Letter to the current Memorandum of Understanding (contract), effective through July 1, 2013, entered into by the State of California (State or State Employer) and the California Association of Professional Scientists (CAPS). The purpose of this Side Letter is to assist in effectuating California Department of Corrections and Rehabilitation (CDCR) Realignment, as mandated in AB 109 and related legislation, and to continue to promote harmonious labor relations between the State and the Union.

The "Realignment" refers to the restructure of the CDCR as outlined in AB109 and will include several "waves" of layoff of CDCR personnel, and may include Unit 10 employees; and

A "wave" is one layoff process, from beginning to end. Realignment anticipates that several waves will be included. The state shall endeavor to fully complete one wave before beginning another; and

By reaching a negotiated agreement on labor issues related to Realignment will save both time and money as opposed to utilizing the typical layoff process; and

This agreement enables employees to have more control over where they may be placed during the Realignment process; and

This negotiated agreement provides employees with the opportunity to make decisions regarding their employment earlier in the process.

Now, therefore, the State Employer and the Union do hereby agree as follows:

1. **Supersession:** In reaching agreement on this Side Letter, the parties agree and confirm that they have, through negotiation, superseded any and all (1) supersedable layoff statutes, including sections of the Government Code, (2) Department of Personnel Administration rules or regulation, (3) provisions of the Layoff Manual, and/or (4) articles of the parties' contract that are in conflict with the terms and conditions of this Side Letter.
2. **Term:** The State Employer shall notice the Union of the final wave that will be initiated by Realignment. This Side Letter shall expire 120 days after the completion of said final wave. As such, this Side Letter will continue beyond the term of the parties' current contract (i.e., beyond July 1, 2013). However, the term shall be extended to cover the commitments in "Leave Banks" in paragraph 22 and the Dispute Resolution procedure herein shall cover disputes concerning the interpretation or application of that paragraph.
3. **Dispute Resolution:** Any dispute regarding the interpretation, application or alleged violation of this Side Letter shall be subject to the grievance and arbitration procedure of

the parties' current contract. However, the following provisions shall apply and prevail if inconsistent with that procedure.

a. Expedited Grievances

The parties agree that all alleged violation of the "Realignment" agreement shall be filed at step four (4) of the grievance procedure.

All other timelines shall apply to the grievance except the following:

- A. Within fifteen (15) calendar days after receipt of the appealed grievance, the Director of the DPA or designee shall respond in writing to the grievance.
- B. Within fifteen (15) calendar days after the notice requesting arbitration has been served on the State, the Union shall contact the State to mutually select an arbitrator. If the State fails to respond to the request or the parties cannot mutually agree upon an arbitrator within ten (10) calendar days after the request to select an arbitrator has been served, the Union may request the State Mediation and Conciliation Service to submit to both parties a panel of nine (9) arbitrators. Within ten (10) calendar days after receipt of the panel of arbitrators from the State Mediation and Conciliation Service, the Union shall contact the State in writing and request to strike names from the panel. The parties shall have five (5) business days to meet and alternately strike names until only one (1) name remains and this person shall be the arbitrator. If the State or Union fails to meet and strike names, the other party shall select an arbitrator from the list.
- C. Nothing in this agreement shall supersede the CAPS Memorandum of Understanding (MOU) section 9.13 relating to health and safety grievances.

b. Expedited Arbitration

The parties agree that all alleged violations of the "Realignment" agreement shall be subject to the following expedited arbitration process:

- A. The arbitrator shall hear and decide as many grievances as can reasonably be presented in a normal work day.
- B. No post hearing briefs unless agreed to by the parties.
- C. If there is no agreement as to post hearing briefs, each party shall present an oral summation of its position and the arbitrator shall issue a bench decision on each grievance. Thereafter, at the request of either party, the arbitrator shall provide the parties with a written decision.

- D. If the parties agree to post hearing briefs, the arbitrator shall issue a decision no later than 60 (sixty) days after receipt of the parties' post-hearing briefs.
- E. Either party may request that the expedited arbitration be conducted with a court reporter. The requesting party shall bear the cost of the reporter.

c. Institutional (Statewide Issues) Grievances

The parties agree that alleged violations of the "Realignment" agreement that occur on a statewide basis, or where the Union is the grievant, shall not be subject to the expedited arbitration process described above. Such institutional grievances shall be subject to the following procedures:

- A. CAPS shall send a grievance letter to the DPA Director, with a copy to the DPA Chief Counsel.
- B. Within five (5) calendar days after receipt of the grievance letter, either party may request a meeting regarding the grievance. If a request to meet is timely made, the parties must meet within ten (10) calendar days of the request.
- C. Within the (10) calendar days after receipt of the grievance letter, the Director of the DPA or designee shall respond in writing to the grievance letter.
- D. Within fifteen (15) calendar days after receipt of DPA's response, the Union shall have the right to submit the grievance to arbitration. Within fifteen (15) calendar days after the notice requesting arbitration has been served on the State, the Union shall contact the State to mutually select an arbitrator. If the State fails to respond to the request or the parties cannot mutually agree upon an arbitrator within ten (10) calendar days after the request to select an arbitrator has been served, the Union may request the State Mediation and Conciliation Service to submit to both parties a panel of nine (9) arbitrators. Within ten (10) calendar days after receipt of the panel of arbitrators from the State Mediation and Conciliation Service, the Union shall contact the State in writing and request to strike names from the panel. The parties shall have five (5) business days to meet and alternately strike names until only one (1) name remains and this person shall be the arbitrator. If the State or Union fails to meet and strike names, the other party shall select an arbitrator from the list.
- E. If there is a disagreement over whether the grievance is an institutional or expedited grievance, the arbitrator shall first decide whether the grievance is an institutional grievance or an expedited grievance.
- F. A court reporter shall be used for any institutional grievances.
- G. No post hearing briefs unless agreed to by the parties.
- H. If there is no agreement as to post hearing briefs, each party shall present an oral summation of its position. The arbitrator shall issue a decision thirty (30) days after receipt of the transcript.

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- I. If the parties agree to post hearing briefs, the arbitrator shall issue a decision no later than thirty (30) days after receipt of the parties' post-hearing briefs.
 - d. If any provision in this agreement is in conflict with the MOU, this agreement shall control.
 - e. Nothing in this agreement shall supersede the CAPS MOU section 9.13 relating to health and safety arbitrations.
4. **Suspension of Contractual Transfer Process:** Transfers pursuant to the contract shall be suspended during this Realignment process that provides opportunities for lateral transfer. This shall not include hardship transfers.
5. **Seniority Scores:** Because all bargaining unit members have already been provided their seniority scores, as well as had the opportunity to challenge those scores, there shall be no further thirty (30) day seniority score challenges for Realignment layoffs. Commencing with the second (2nd) wave, after SROA notices are received, employees shall have fourteen (14) calendar days in which to provide additional information related to their seniority scores (i.e., challenges), except for employees that did not receive the original 30 day review.
6. **Waves:** Each wave shall include the Voluntary Transfer Process and the SROA/Layoff process of each Layoff plan. After the first wave, the Voluntary Transfer and SROA/Layoff processes may occur concurrently.
7. **Communication:** The Union shall have two (2) consecutive business days from the time of receipt to review and provide comment on each of CDCR's draft Realignment communications meant for employees.
8. **Options Discussions for Transfer:** Employees shall have access to a state created video explaining the bid and transfer process and answering FAQs and can utilize the 800 hotline for assistance (from 7:00 am to 5:00 pm Monday through Friday) using State equipment during his/her regularly scheduled shift at the worksite. A Union Representative may be on the line, at the employee's option, so long as his/her presence is announced.
9. **Distribution of Workforce/Layoff:** Each Realignment wave will be based on a determination of overages and vacancies in staffing. Surplus employees will be given State Restriction of Appointment (SROA) notices although actual layoffs may be mitigated through the Voluntary Transfer Process at the beginning of each Realignment wave.

10. **Retired Annuitants and Limited term** – If any retired annuitant or limited term appointment fills a bargaining unit position, that position is deemed a vacancy for the purposes of transfer, layoff, and reemployment placement.

11. **Voluntary Transfer Process:**

- (1) The California Department of Corrections and Rehabilitation (CDCR) shall first publish statewide information regarding locations that have overages and vacancies by classification. This information will be available on the intranet and at a designated area at each worksite.
- (2) CDCR shall also post name, classification and seniority scores by county on the internet, intranet and at each work location.
- (3) Voluntary transfers may be requested by any employee within a county with an overage in that employee's designated classification. All vacancies in the State in that classification shall be made available for such transfer request.
- (4) By the designated deadline, employees shall opt in or opt out of the voluntary transfer process by filling out the form(s) provided by CDCR. For those that opt in, employees shall rank their transfer preferences. Employees shall have ten (10) calendar days from the date of postmark to complete and return the required form(s). Responses may be mailed, sent via facsimile or scanned and emailed. Late response shall not be accepted or processed.
- (5) On the transfer form(s), CDCR shall communicate to employees that, although this Voluntary Transfer Process allows employees with the opportunity to transfer out of county sooner, depending upon demotional bumping and one's seniority score, an employee theoretically still could be laid off at the conclusion of the SROA/layoff process and/or permanently involuntarily transferred within an impacted county.
- (6) All requests for voluntary transfer shall be awarded based upon statewide seniority.
- (7) CDCR shall calculate the transfer awards and communicate a start date and endeavor to provide a 30 day notice for transfers over 50 miles. After receiving a transfer date, an employee may be granted a change in the report date by agreement of the releasing worksite and the receiving worksite.
- (8) No relocation shall be paid for such voluntary transfers.



12. SROA/Layoff Process:

- (1) After the Voluntary Transfer Process, the amount of overages and vacancies will be recalculated by county.
- (2) The area of layoff shall be county-wide.
- (3) Those with the lowest seniority within the county shall be subject to the SROA/layoff process.
- (4) Employees are able to pursue out of county opportunities through the SROA process.
- (5) BU10 impacted employees may be offered same class, primary demotional, and personal demotional options based on seniority within ~~in~~ the county during ~~in~~ the layoff options process.
- (6) Layoffs shall occur in accordance with inverse seniority within the impacted county/counties. The least senior employees who are subject to layoff shall receive 30-days written notice of the effective date of their layoff or the transfer report date as described below. An employee may be granted a change in the report date by agreement of the releasing worksite and the receiving worksite.
- (7) Transfer within CDCR: Once the layoff process is completed, where overages still remain, the least senior employees shall be permanently, involuntarily transferred to a location within the county that still has vacancies. There shall be no relocation, per diem, mileage or other travel reimbursement paid in association with such involuntary transfers.
- (8) Those who do not comply with such permanent involuntary transfer shall be Absence Without Leave (AWOL) separated.
- (9) Transfer to Another Department: After receiving a transfer to another department an employee may be granted a change in the report date by agreement of the releasing hiring authority and the receiving hiring authority.
- (10) There shall be no relocation remuneration for any other transfers or movement associated with this agreement.
- (11) For Bargaining Unit 10 rank and file members impacted by AB109 Realignment, departments filling vacancies shall offer positions to

employees facing layoff, demotion in lieu of layoff and mandatory geographic transfer who meet the minimum qualifications for the vacancy being filled, provided that the vacancy is equivalent in salary and responsibility and in the same geographic area and bargaining unit.

“Same geographic area” will be defined by the impacted employees as:

- a. All contiguous counties of the impacted employees current position within CDCR or:
- b. Three counties where employment opportunities exist in the other departments that employ scientists.

- (12) DPA and CAPS shall establish a process to oversee compliance with language described above in Section 12, subsection 11. DPA and CAPS shall endeavor to meet and agree to this process by November 30, 2011.

13. Temporary Redirections.

While the department is undergoing “Realignment” all redirections shall be made by requesting volunteers first and awarding the position to the highest senior employee interested. If there are no volunteers, then the department shall use inverse seniority to mandate the redirection.

All redirected employees shall be reimbursed for per diem and mileage in accordance with Article 6.1 Business and Travel Expense of the CAPS MOU. If the employee is not reimbursed with forty-five (45) days, s/he shall be given a check in the amount owed no later than the following business day.

- 14. Salary Advance:** Any CDCR employee who changes his/her residence and transfers pursuant to this agreement to another CDCR institution/work location shall be allowed the ability to request a salary advance pursuant to the State’s policy and procedures. Employees who receive a salary advance shall repay the advance in full no later than the following pay period in which it was received. Such requests shall be made at least two (2) weeks prior to transfer, and honored no later than seven (7) days after the request is made.

- 15. Pay Adjustments:** Any pay adjustment required by a transfer or placement in lieu of layoff shall not be made until the employee’s scheduled report date.

- 16. State Release for other State Employment:** After the voluntary bid and transfer process, all impacted employees who did not transfer and who received an SROA notice shall receive reasonable State release time to attend state-sponsored job interviews, job fairs, conduct research, and apply for open positions in other State agencies. Such requests shall not be unreasonably denied and any denials must be based on identified operational needs. Where there is State equipment available, the employee shall be allowed to use State equipment to conduct research.

17. **Release for Outside Employment:** After the voluntary bid and transfer process, impacted employees who did not transfer and who received a SROA notice may request and use his/her own leave credits to attend training in the community. Requests to attend such trainings shall not be unreasonably denied; any denials must be in writing and based on identified operational needs.
18. **Options Training for Layoff:** All Employees potentially impacted by "Realignment" shall have access to State created videos and the 800 hotline (as referenced in paragraph 7) explaining the SROA and Layoff process.

Impacted institutions/work locations shall provide a dedicated meeting space and equipment for a minimum of two (2) days during each wave for employees potentially impacted by "Realignment" to use. While on duty, employees, with a supervisor's approval of reasonable release time, shall be able to utilize the equipment to place calls to the 800 hotline and to watch the State created videos. CAPS shall be notified of the impacted institutions/work locations proposed days to provide this equipment.

19. **Realignment Impact Training:** The State shall facilitate telephonic equipment with outside line capabilities for informational conference calls at the request of the Union. The Union will provide a call-in number for the employee to participate in the call. Impacted employees shall be allowed two (2) hours during his/her regularly scheduled shift at the worksite for telephonic conference calls during each wave.
20. **Orientation and Training:** Any impacted employee that transfers to another institution/worksites or has changes to his/her job duties in assignments shall be provided orientation and any required on-the-job training in his/her new position, including, but not limited to, New Employee Orientation and in-service training.
21. **Pre-approved Leaves:** Management shall honor any pre-approved leaves (paid and unpaid).

22. **Leave Banks**

During "Realignment," employees shall be given maximum discretion to utilize their outstanding Furlough, Personal Leave Program 2011 and Professional Development time. These requests shall be granted or denied in a timely manner.

For every request denied of an impacted employee (excluding PDD), the denied credits shall be used (if not already used) to extend an employee's time on the books after he/she physically separates. Such time may not be used to earn any leave credits/health benefits/retirement credits or the like. That is, such time shall not count as a qualifying pay period.

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23. **Merit Salary Adjustment:** Employees who do not change their classification shall not receive a new merit salary anniversary date.

24. **Probationary Period:** Employees impacted by voluntary transfer, involuntary transfer, redirection of demotion due to "Realignment" shall not serve a new probationary period. However, if an employee has not previously served probation in the classification, s/he may be required to serve a probationary period.

25. **Information Updates**

Except as provided below, beginning November 1, 2011, and at least sixty (60) days prior to the implementation of each wave, the State shall provide CAPS the following information:

- A. Vacancy lists (lists shall include classification, county, facility, and unit); and
- B. Overage and Vacancy lists (lists shall include classification, county, institution/work location or work address); and
- C. Final seniority scores will be posted thirty (30) days prior to the end of each wave; and
- D. Monthly update of all California State Departments partially or completely excluded from the hiring freeze; and
- E. Current staffing (placement listing) within thirty (30) days of the end of each wave of "Realignment".

26. **Primary Demotion Patterns:** CAPS will review the provided demotional patterns and meet with DPA and CDCR to meet and confer about any demotional patterns that CAPS identifies as inaccurately reflecting the class series.

DPA or CDCR shall notice CAPS of any new classifications impacted by "Realignment" that have not had a primary demotional pattern identified yet. If CAPS identifies an inaccuracy with the class series, the parties shall meet to attempt to resolve any dispute(s).

27. **Layoff Progression:** Management shall make all efforts to avoid implementing overlapping waves of layoff. In the unlikely event that management must initiate an overlapping wave, it shall notify the union as soon as possible. CAPS shall have the right to meet and confer regarding the impacts of the wave, but the process shall not delay the implementation of the subsequent wave.

28. **Layoffs "Outside of Realignment":** Any other CDCR layoff during Realignment shall be governed by this agreement.

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29. **Per Diem:**

Per Diem for Transfer over 50 miles only	Amount	Basic Duration
Voluntary	\$125	30 days
Involuntary	\$90	22 days

30. **Administrative Time Off:**

ATO for those who move within 6 months of his/ her report date	100-200 miles	200+ miles
Voluntary	16 hours	24 hours
Involuntary	16 hours	24 hours

31. **Reemployment Rights**

All employees impacted by layoff or demotion in lieu of layoff, or who are geographically displaced more than fifty (50) miles, shall be given general reemployment status in the classifications in their primary demotional patterns.

32. **Meet and Confer Triggers**

Nothing herein shall be deemed a waiver of the Union's right to receive notice, or meet and confer, regarding changes to any policy, legislation, law, rule, resolution, or regulation proposed to be adopted by the State directly related to matters within the scope of representation.

At CAPS' reasonable request, DPA and CDCR shall meet with CAPS to discuss matters of institutional concern (e.g., staffing levels).



APB107 Side Letter
CDCR Realignment.

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